KempHoogstad
Tax Advice & Solutions

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Dear clients,

Summer is slowly coming to an end and we all return to work full of energy.

You will read more about the introduction of a new discount on social security for part-time employees, the introduction of new rules for the taxation of low-energy cars used by employees and new information issued by the General Financial Directorate on the reporting obligations under DAC 6. Don't overlook the increase in interest on late payment of tax in the second half of 2022 and some options how to reduce the interest. We also bring you two interesting judgments of the Supreme Administrative Court, one from the research and development area, the other concerning the risk of the "švarc system" in the case of a work contract concluded between legal entities. Finally, we present the opinion of Advocate General Juliane Kokott in relation to the liability of a member of the statutory body for unpaid VAT of a company.

Please do not hesitate to contact us should you have any questions. We look forward to our further cooperation.

Bohdana Pražská and the KempHoogstad Team

Contents

Social security relief for part-time employment

From 1 February 2023, employers will be able to apply a new discount on social security contributions with respect to selected part-time employees. The aim is to support part-time employment for those who cannot work full-time because of their age or difficult life situations.

The monthly relief social security contributions paid by the employer in the amount of 5% (from the current 24.8%) can be applied by the employer on the assessment base of all part-time employees (i) the work hours of each of those employees amounts to at least eight hours but not more than 30 hours per week, (ii) the assessment base on all employees of the same employer does not exceed 1.5 times the average wage and (iii) at the same time, the assessment base of all employees of the same employer allotted to one hour from the hours worked in a calendar month does not exceed 1.15% of the average wage.

The parliamentary bill introducing the changes also specifies other conditions for applying the relief mentioned above. The selected categories of employees also contain persons older than 55 years, parents who take care of children aged under ten years, persons who take care of a relative under ten years who depends on help from another person, persons with health disabilities and persons engaged in job retraining. Relief on social security contributions can be applied in respect of persons aged under 21 years, regardless of the amount of their working time.

Regarding employees who are employed in more than one post by the same employer, social security relief in respect of such an employee can be applied only in respect of one of the employment posts. If the employee works for more employers in the given calendar year, the relief can be applied by only the first employer to apply for the relief.

Moreover, the employer has to notify the Czech Social Security Authority of the intention to apply for the relief via a dedicated form by the deadline for submitting the regular overview of the calendar month in respect of which the relief should be applied. The employer reduces the total amount of the social security by the relief granted in the given month. Furthermore, the employer will be obliged to keep records in respect of all employees for whom it claims the relief. The bill also imposes an information obligation on employees towards their employer. If the relief is applied incorrectly because of a mistake on the part of the employee, the employer can claim the reimbursement of the penalty incurred from the employee.

New rules for taxation of employee low-emission cars

According to information issued by the General Financial Directorate (GDF), the non-monetary income for a low-emission vehicle will now be set at 0.5% of the purchase price of the vehicle per month from 1 July 2022 (1% for other types of cars). Even though the pertinent amendment to the relevant parliamentary act is effective from 1 July 2022, the transitory provisions allow the new rule to apply for the entire 2022 tax year.

The informational note issued by GDF explains how to treat any overpayment for the first half of 2022, before the amendment came into effect. However, it does not deal with overpayments of social security and health insurance

contributions for the first six months of 2022, and it does not define low-emission vehicles either. The question still is: what vehicles fall into this category and how will their low-emission quality be proven?

According to a statement issued by the General Health Care Insurance Company ("Všeobecná zdravotní pojišťovna"), for the purposes of calculating health insurance contributions, the reduced amount of the given non-monetary benefit can be applied to the assessment base from the effective date of the act (i.e. from 1 July 2022), but not retroactively for the first half of 2022. In practice, this means that the total annual assessment base for health insurance contributions in respect of an employee in 2022 will differ from total annual taxable income. The Czech Social Security Authority has not commented on this yet.

The GDF added new information on the reporting obligation under DAC 6, including examples

The GDF has published a new list of questions and answers on the reporting obligation for cross-border tax arrangements (DAC 6). The information clarifies that only a tax-transparent entity has a reporting obligation under DAC 6. According to the GFD, tax-transparent entities, such as a public company or a mutual fund, should be treated in such a way that their shareholder (partner), who is not involved in the arrangement as an investor, will not be considered a user of the arrangement.

The information also addresses the position of a tax advisor on the reporting obligations under DAC 6 when preparing a tax return. The work of a tax advisor, auditor or lawyer who provides services after the implementation of the arrangement does not qualify for notification as an intermediary. The provision of tax advice in connection with an arrangement already implemented in which the tax advisor has not participated also does not qualify for notification either as an intermediary or as an ancillary intermediary. Even the tax advisor's assessment of an already implemented arrangement does not trigger the obligation to notify as an intermediary.

The GFD also clarifies that if the intermediary has its domicile, permanent residence, registered office or place of management in the Czech Republic, it is always subject to the reporting obligation exclusively in the Czech Republic, even if the tax saving occurs outside the Czech Republic.

In order to assess the main benefit test, the GFD provides more information on the causal link between the characteristic and the expected tax advantage. The main benefit test is not met if the tax advantage does not represent a tax saving but only a simplification of tax administration. According to the Financial Administration's statistics, a total of 157 notifications under DAC 6 were made by the first half of 2022.

Increase in default interest - can it be reduced?

At the end of June, the Czech National Bank increased its repo rate again – this time to 7% p.a. The higher repo rate will also have a major impact on the impact on the tax rate under the Tax Code. As of 1 July, default interest is calculated at the rate of 15% per annum. Late payment of tax is therefore more expensive again.

Interest on late payment on unpaid tax starts to accrue from the fourth day after the tax is due. It accrues for each additional day of delay and is calculated on the amount of unpaid tax multiplied by the interest rate (composed of the CNB repo rate applicable on the first day of the calendar half-year, plus a fixed component of 8 percentage points). The tax administrator shall assess interest on late payment if the amount of interest has reached at least CZK 1,000 on the date of payment of the tax due.

The level of the interest rate therefore changes with respect to the repo rate. In 2022, there will be two rates of interest on late payment – 11.75% until 30 June 2022 and 15% from 1 July. Now it is necessary to pay all taxes on time. Interest on late payment is calculated in the same way, regardless of whether the tax is increased as a result of a supplementary return or as a result of a tax inspection. However, filing a supplementary tax return allows up to 20% interest to be waived.

Interest can be reduced if the taxpayer requests a delay in paying the tax. This extends the due date for the tax or its instalment payment, while only interest on the delayed amount is payable for the period of delay, which is only half the interest on the delayed amount. (For the second half of 2022, the interest rate on the delayed amount will be only 7.5%.)

It is also possible to apply for a waiver on the payment of interest due once the tax due has been paid; there is a fee for this application. On the basis of the reasons stated in the application, the tax authority may reduce the interest by 20% or more (or even waive it). When stating the reasons for applying, we recommend referring to Direction D-47, which deals with this issue. If you become aware of a potential tax assessment (for example, during a tax inspection, it is possible to reduce the amount of interest by paying the tax into your tax account before the assessment. With the overpayment subsequently used to pay the tax due, interest on the overpayment will only be calculated to the date of the actual payment of the tax due, not to the date of the assessment of the underpayment.

R&D deductions and questionable issues

In June 2022, the Supreme Administrative Court (SAC) issued an important judgement regarding the application of deductions on research and development. The judgement resolves two questionable issues: (i) the concurrence of a subsidy and the claiming of a deduction, and (ii) the need to allow the tax administrator to take the technical documentation of the R&D project (or a copy thereof) outside the company's premises for the purpose of verifying the novelty element.

Regarding the concurrence of a subsidy and a deduction claim on one R&D project, the Court acknowledged that the current legislation allows this option but that those must not be the same costs.

The crucial point is not what costs were actually paid from the subsidy, but which items the subsidy agreement defined as eligible costs.

With respect to the second question, the Court considered whether the taxpayer had proved the presence of a measurable element of novelty or clarification of research or technical uncertainty in one of its R&D projects. Despite repeated requests, the taxpayer did not submit the relevant technical documentation for the project or a copy of it to the tax authorities owing to concerns about the confidential nature of its know-how; the documentation was only available at the company's premises.

Further to the second question, the SAC found that the taxpayer had failed to meet the burden of proof in relation to the element of novelty by not making the R&D project available to the tax authorities outside the company's premises. Thus, when the deduction is examined during a tax inspection, the entity is obliged to provide the relevant documentation to the tax authorities also outside the company's premises.

The risk of the so-called švarc system even in the case of a work contract between legal persons

The SAC has issued a judgment concerning the švarc system and a disguised (de facto) employment service (i.e. job agency/headhunting service). According to the court, what is crucial for the assessment of the actual situation is how the employee himself understands his position – even if the services are invoiced on the basis of a work contract between companies.

In the examined case, the execution of work at the client's workplace was carried out by several workers (women) of foreign nationality with whom the client had no contract. The foreign women worked at the same workplace with the client's employees; the work, training, supervision, tasks and remuneration from the client were the same as that which applied to the client's employees. They performed the same or similar work and were trained, supervised, tasked and paid by the client's employees. The majority of the foreign women concerned were not contracted by the contractor; on the contrary – all the foreign women considered the client to be their employer. Thus, the internal position of the foreign women at the workplace did not differ in any way from that of the client's employees. The SAC thus concluded that the foreign women's work fulfilled all the characteristics of a dependent activity in relation to the client, and thus that it constituted an instance of the švarc system, despite the fact that a work contract had been concluded between the companies, and invoicing took place. A fine of CZK 1 million was imposed. If it had been proved that the client had disguised the fact that it was a de facto employment agency, the financial penalty would have been even greater.

Inspections of illegal employment are still frequent and the penalties are very severe for both parties. Last year, 677 fines were imposed in the field of illegal employment, totalling to CZK 165 million. In respect of disguised employment, 134 fines were issued amounting to a total of almost CZK 67 million. We therefore recommend that you carefully examine your current and future contractual relationships with your suppliers.

Is a member of a statutory body liable for unpaid VAT?

Advocate General Juliane Kokott dealt with the question whether the general joint and several liability of the statutory body falls within the scope of the VAT Directive (on the grounds of the company's inability to pay its VAT debt). She also commented on whether national legislation can impose direct liability on a dishonest member of a managing board whose conduct leads to the company's inability to pay the tax properly.

She concluded that the direct liability of a managing director for unpaid tax of a third party is not contrary to the VAT Directive and is in line with the protection of the EU's financial interests. At the same time, she considered it essential to adopt national legislation aimed at discouraging directors from engaging in dishonest activities in order to achieve the collection of tax for the national budget. Under Czech legislation, this institution could be compared to the term "due managerial care" („péče řádného hospodáře").

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